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23550 7590 03/08/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER DOAN, DUYN MY	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/065,729
Filing Date: November 13, 2002
Appellant(s): BUSWELL ET AL.

MAILED

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Technology Center 2100

Spencer K. Warnick
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/30/2006 appealing from the Office action mailed 4/26/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 6/26/06 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,691,162	Wick	9-1999
200501002382	MacGregor	6-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9-12, 14-18, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Wick (us pat 6691162).

As regarding claim 1, Wick disclosed a client-server text messaging (CSTM) monitor installed on a computer system, the monitor configured to monitor a CSTM server for commands posted thereto (col.2, lines 14-20, col.5, lines 1-39); and a management program installed on the computer system which is responsive to the commands (col.2, lines 63-67; col.5, lines 35-39, client monitor the server to see if there is a command (IP address, ID) of other chat client posted on the server, the client response back in response to that command).

As regarding claim 2, Wick disclosed the CSTM monitor and server are configured to function according to Internet relay chat protocol (col.2, lines 14-20, col.5, lines 1-39, IRC protocol is an inherent feature, the system of Wick enable client to perform chat or instant messaging).

As regarding claim 3, Wick disclosed the command is in the form of a text string (col.7, lines 23-30).

As regarding claim 4, Wick disclosed the command includes a preface, an identifier and an instruction for the management program (col.7, lines 23-30).

As regarding claim 5, Wick disclosed the CSTM monitor is also configured to post a response from the management program to the CSTM server (col.5, lines 1-23).

As regarding claim 6 Wick disclosed the CSTM server includes a log program configured to record CSTM server activities (col.5, lines 1-55, this is an inherent feature in the chat messaging system, server keep a log of all the activity between users).

As regarding claim 7, Wick disclosed the CSTM server is configured to receive commands from an update server (col.5, lines 1-39).

As regarding claim 9, Wick disclosed the management program is idle until it receives a command (see col.5, lines 1-55, this feature is well known in the chat system, chat client doesn't response to the command until the other client is posted a command on the chat server, then the client response to it).

As regarding claim 10, the limitations are similar to claim 1, therefore rejected for the same rationale as claim 1.

As regarding claim 11, the limitations are similar to claim 3, therefore rejected for the same rationale as claim 3.

As regarding claim 12, the limitations are similar to claim 2, therefore rejected for the same rationale as claim 2.

As regarding claim 14, the limitations are similar to claim 1, therefore rejected for the same rationale as claim 1.

As regarding claim 15, the limitations are similar to claim 2, therefore rejected for the same rationale as claim 2.

As regarding claim 16, the limitations are similar to claim 3, therefore rejected for the same rationale as claim 3.

As regarding claim 17, the limitations are similar to claim 4, therefore rejected for the same rationale as claim 4.

As regarding claim 18, the limitations are similar to claim 6, therefore rejected for the same rationale as claim 6.

As regarding claim 20, the limitations are similar to claim 5, therefore rejected for the same rationale as claim 5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8,13,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wick as applied to claim1,10,14 above, and further in view of MacGregor et al (us 20050102382) (hereinafter MacGregor).

As regarding claim 8, Wick disclosed all limitations of claim 1 above but did not expressly disclosed the CSTM monitor is also configured to sense a problem in the computer system.

MacGregor taught the CSTM monitor is also configured to sense a problem in the computer system (pg.3, par 32-34; pg.4, par 46-48).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of MacGregor to the method of Wick to have the CSTM monitor is also configured to sense a problem in the computer system, because both Wick's invention and MacGregor's invention taught monitoring network in an instant messaging system.

A person with an ordinary skill in the art would have been motivated to combine the teaching of MacGregor to the method of Wick to have CSTM monitor to sense a problem in the computer network, because by sensing a problem in the computer would help the server in determining problems that occurs in the computer and enable devices, network and network objects to be managed with simple and powerful tools on a worldwide instant messaging network (see MacGregor pg.3, par 33; pg.4, par 46-48).

As regarding claim 13, the limitations are similar to claim 8, therefore rejected for the same rationale as claim 8.

As regarding claim 19, the limitations are similar to claim 8, therefore rejected for the same rationale as claim 8.

(10) Response to Argument

Regarding appellant's first argument with respect to claim 1 that Wick fails to disclose "the monitor configured to monitor a CSTM server for a command from a management system posted thereto". The Examiner respectfully disagrees with this allegation. Appellant's specification fails to define the terminology "command". One of ordinary skill in the art applying the broadest reasonable interpretation in the environment disclose by appellant to the terminology "command" would construe this terminology to correspond to message posted on a sever regarding the status of the user from a computer system. For example, a computer system can posted a message (i.e command) to a server, the

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message regarding the online/off-line status of the user. Wick discloses a chat messaging system that allow the user (computer system) to monitor other specified users (other user is equivalent to the management system) are signed on and/or off (signed on or off message that the other user posted to the server is equivalent to the command) (see Wick pg.2, par 16-20, lines 27-30; col.3, lines 9-12; col.5, lines 35-39). The language of the claim does not prohibit monitoring to be performed from a client computer. Further, applicant's specification page 19, applicant suggests that the monitoring system can be part of server or other system. Thus, interpreting the monitoring from client system computer is appropriately read in light of the specification. Further Wick discloses monitoring that a specified user has signed on to the computer service can occur either at the client system or in conjunction with a server on the network (see Wick col.5, lines 35-39).

As regard to appellant's second argument with respect to claim 1 that Wick does not teach "a management program installed on the computer system which is responsive to the command from the management system". Examiner respectfully disagrees, examiner interprets the above limitation as follow: "response to a message from the computer system". Wick discloses detecting the user is available to receive message, sending the message to that user (this equivalent to responsive to the command) (see Wick col.2, lines 16-20, lines 63-67 to col.3, lines 1-12). Wick discloses an instant messaging system that allows the user 1 to monitor the online/off-line status of user 2, when the user 2 signed on or off, the user 2 will send message the server

regarding the online/off-line status of user 2, The buddy list on the computer of user 1 contains the updated status of the user 2, and the user 1 will response by sending a message to the user 2 upon detecting that the user 2 is online.

As regard to applicant's third argument on claim 1 that the prior art does not teach " a management system that is capable of evaluating, monitoring, and correcting problems on managed computer system", In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a management system that is capable of evaluating, monitoring, and correcting problems on managed computer system) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant has raised this issue in the remark dated 2/16/06. The examiner has responded to this argument in the office action dated 4/26/06. Later, applicant amended the claim, by putting the above limitation into claim 1. Examiner has denied entry, because of the untimely amendment.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

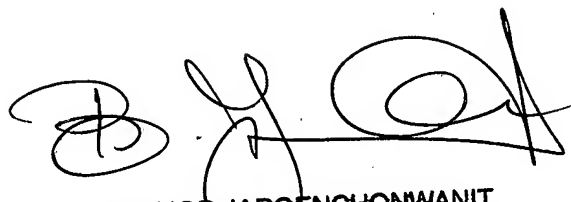
Respectfully submitted,

Examiner

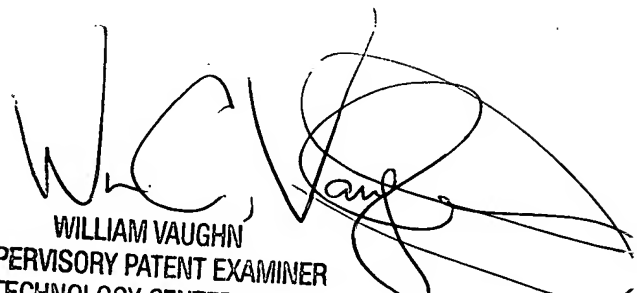
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